IN THE HIGH COURT OF BOMBAY AT GOA
****

WRIT PETITION NO. 361 OF 2001

1. Smt. Sangeeta
Upadhye, near Mahalaxmi
Temple, Bandora,
Ponda, Goa, and

2. All Goa Private Schools,
Pre-Primary and Primary
Teachers' Association,
having its office S-5,,
Santimano Mansion,
Gogol, Margao. ... Petitioners.

Versus

1. Manager, Tiny Tots
School,

2. Chairperson, Shri
Shantadurga Shiksha
Samiti, Kavalem,
Ponda, Goa,

3. Director of Education,
having its office at
Education Dept., 18th
June Road at Panaji,

4. Smt. Asha Naik,
Tiny Tots, Shri S.S.
Samiti Chavli, Ponda,
Goa,

5. Shri Sulochana Borkar,
Tiny Tots School,
Dhavali, Ponda, Goa, and

6. State of Goa, through
The Secretary of
Education, having its
office at Secretariat,
Panaji. ... Respondents.

Smt. S. S. Naik, advocate for the petitioners.

Shri S. S. Kantak, advocate for respondent no.2.

Shri A.N.S. Nadkarni, Advocate General with Shri P. A. Kamat, Addl. Govt. Advocate for respondents no.3 & 6 .

Shri N. K. Sawaikar, advocate for respondents no.4 & 5.

CORAM: V. C. DAGA &
P. V. HARDAS, JJ.

DATE: 1st July, 2002.

ORAL JUDGMENT (Per V. C. Daga, J.)

Rule returnable forthwith. Heard by consent of parties.

2. The petitioner no.1, who worked as a teacher with Tiny Tots Primary School, respondent no.1, is seeking implementation of that part of the Judgment of the Administrative Tribunal Goa at Panaji, dated 30th June, 1997, whereby respondents were directed to pay to the appellant, i.e. present petitioner no.1, her salary from December 1992, in the prescribed scale after deducting the salary paid @ Rs.150/- per month.

3. Heard rival contentions. The controversy centres around the question as to who is liable to pay the arrears of salary to the petitioner no.1 as directed in the Judgment of the Tribunal. The respondent no.1, Tiny Tots Primary School is being managed by the respondent no.2, as the said respondent has taken over their management under its Resolution dated 28th February, 1994. The Society which was running the respondent no.1 Tiny Tots School, was neither a party to the appeal before the Tribunal, nor to the present petition. Hence, the moot issue is who should discharge the liability of the petitioner no.1.

4. At this juncture it will be necessary to point out that the petitioners are pressing only for one relief, i.e. claim for arrears of salary. So far as the other claims are concerned, petitioners have waived their right to claim those reliefs. Hence, consideration of the claim is restricted to the claim of arrears of salary only.

5. At the outset, Shri S. S. Kantak, learned counsel appearing for respondent no.2, raised a preliminary objection to the maintainability of the petition on the ground of availability of the alternate remedy to the petitioner no.1 under Section 11 of the Goa Administrative Tribunal Act 1965, to execute the Judgment of the Tribunal as decree which amongst other reliefs, directs recovery of the salary from the respondents from December, 1992, as per prescribed scale, after deducting the salary paid at the rate of Rs.150/- per month.

6. The petitioners are seeking implementation of the Judgment passed by the Tribunal after full contest. All disputed questions are crystallized in the Judgment of the Tribunal. The relief of implementation of Judgment of the Tribunal can hardly be said to involve any disputed questions of fact in the peculiar facts and circumstances of the present case. The argument advanced by the learned counsel for respondent no.2 would have

assumed some importance, had there been no adjudication of any claim set up by the petitioner no.1. The Tribunal had an opportunity to go into all disputed questions of fact and after full trial, the Tribunal came out with the finding amongst others, that the respondents were liable to pay salary from December, 1992, as the action of termination was held to be bad. In our opinion no disputed questions of fact are involved. It is thus not necessary to relegate the petitioners to the alternate remedy, namely; to execute the Judgment as a decree of the Civil Court. The preliminary objection raised is thus overruled.

7. The next contention to defeat the petition advanced by Shri Kantak, is that respondent no.2 has taken over the management of the School, without any past liability, hence the respondent no.2 cannot be held liable to discharge this liability. Reliance is placed on the Resolution dated 28th February, 1994 (Exh. R.4) produced on record alongwith counter-affidavit of respondent no.2. This Resolution reads as under:-

"Ref. No.SSSS/93-94/

Date:28/2/1994

RESOLUTION

Ref:Transfer of Tiny Tots Primary School

Resolved that the management of Tiny Tots Primary School, Dhavali may be taken over by Shree Shantadurga Shikshan Samiti,

> Kavlem to run the school at Dhavali from 1st June, 1994 provided Tiny Tots Society clears and promises to clear all the liabilities arising for the period of management upto 31st May, 1994."
> (Emphasis supplied)

8. At this juncture, we may state that the Tribunal holds all the respondents liable to pay arrears of salary. The respondent no.2 did not challenge this Judgment of the Tribunal. The respondent no.2 has rightly or wrongly suffered this finding which has become final and conclusive. The Judgment of the Tribunal operates as res judicata between the parties. This Court can neither go behind the Order or Judgment of the Tribunal, nor examine the legality thereof. No doubt the Resolution specifically mentions that take over of the Tiny Tots School is subject to clearance of the liabilities but, at the same time, extracted from them promise to clear the liabilities arising for the period of management upto 31st May, 1994. Therefore, while taking over the management of the School it was well-within the knowledge of respondent no.2 that the Tiny Tots School was under for certain liabilities and, therefore, a promise was asked for from them that they would clear all their liabilities arising for the period of management prior to 31st May, 1994. The said clause is in the nature of indemnity clause.

9. It was open for the respondent no.2 to first insist upon Tiny Tots School to clear all their past

liabilities and, then, upon due satisfaction in this behalf, to take over management of the Tiny Tots School or to take over management of the School without any past liability. However, for the reasons best known to the respondent no.2, they did not insist for clearance of the past liability at the time of take over, though their earlier Resolution dated 6th January, 1994, specifically resolved to take over management of the Schools from the next academic year, 1994-1995, provided no liability financial or otherwise is fastened on them. This specific Resolution and decision taken was given go-by in the subsequent Resolution dated 28th February, 1994. The subsequent Resolution dated 28th February, 1994, is pregnant with the right reserved by the respondent no.2 to claim the amount of any past liability from Tiny Tots School if they were made to discharge their liability. A specific promise in this behalf appears to have been taken by them from Tiny Tots School, while taking over their management. As a matter of fact, we are not required to go into this aspect of the matter. This issue ought to have been raised by the respondent no.2 before the Tribunal when the matter was pending before it. We went into this aspect of the matter only to point out that refusal on the part of the respondent no.2 to discharge this liability is not justified.

10. In the above view of the matter, we are of

the opinion that so far as the previous liability of the Tiny Tots School is concerned, the respondent no.2 will have to discharge the said liability subject to their right to recover this amount from the said respondent no.1, School or Society, as the case may be. The contention raised by Shri Kantak that the management was taken over without any liability is devoid of any substance, and we have no hesitation to reject the same.

11. Having examined the impugned Judgment of the Tribunal, no positive liability is to be found against the State of Goa or other respondents other than Tiny Tots School, the respondent no.1, which is under the management of the respondent no.2, who is presently in the shoes of the Tiny Tots School. The stand taken by respondent no.2 Society, compels us to devise some mechanism to see that the Judgment of the Tribunal is implemented in its true letter and spirit without driving the petitioner no.1 to any other litigation, as also to prevent multiplication of litigation. In this connection it is useful to refer to the observation of B. P. Singh, J. (as he then was), in a Patna High Court decision in **Bilas Devi** vs. **Bansidhar Sahu**, AIR 1951 Pat. 459, that:-

> ".....The Court will always resist any attempt on the part of any of the parties to construe the decree in such away as to multiply litigation."

12. The State of Goa, and respondent no.3, Director of Education who are parties to this petition, have control over respondent no.2. We, therefore, feel that it would be proper to direct the State Government, the respondent no.6, to get the scale of the petitioner no.1 determined through respondent no.3, and to find out as to what scale or amount the petitioner no.1 would be entitled. after deducting the salary paid to the petitioner no.1 at the rate of Rs.150/- per month as directed by the Tribunal. The State Government, respondent no.6, after determining the amount payable to the petitioner no.1, shall recover the amount payable to the petitioner no.1 from respondent no.2 and after recovery thereof, it shall pay the said amount to the petitioner no.1 in pursuance of this Order. In the event of non-payment by respondent no.2 Society, as ordered hereunder, it would be open for the respondents no.3 and 6 to take appropriate steps against them for recovery thereof for being paid to the petitioner no.1. Needless to mention that in the event of discharge of this liability payable to the petitioner no.1, the respondent no.2 Society, shall be entitled to recover this amount from the respondent no.1, Tiny Tots School in accordance with law.

13. The last question which needs consideration

is as to up to what date the petitioner no.1 is entitled to claim her salary. In the absence of any terminal point mentioned in the Judgment of the Tribunal, the petitioner no.1 shall be entitled to the arrears of her salary till the date she was re-employed i.e. upto lst April, 1995. We, therefore, make it clear that upto 31st March, 1995, only the petitioner no.1 would be entitled to claim arrears of her salary.

14. We hope that the respondent no.6, State of Goa, shall take all steps to quantify the liability of the respondent no.2, Society, and effect recovery thereof, so as to make payment to the petitioner no.1, as expeditiously as possible, at any rate, within four months from the date of receipt of the writ of this Order from this Court.

15. Petition is partly allowed. Rule is made absolute in terms of this Order, with no order as to costs.

V. C. DAGA, J.

P. V. HARDAS, J.